

[4] After conferring with Mr Mitchell and Mr McIlraith, counsel for the parties, the Authority received on 22 February 2012 joint submissions from them as to the removal application.

Grounds

[5] The parties have a common view that in the circumstances grounds for removal are present under s 178(2)(a) and (c) of the Act. They agree that an important question of law is likely to arise in the matter other than incidentally and that the Court already has before it proceedings which are between MUNZ and Ports of Auckland and which involve the same or similar or related issues.

[6] The important questions of law are contended to arise from or relate to:

- (a) The interpretation of s 33 of the Act in a potential contracting-out situation. Section 33 casts a duty of good faith on parties in collective bargaining, requiring them to conclude a collective agreement unless there is a genuine reason, based on reasonable grounds, not to;
- (b) Issues whether (as a matter of fact and law) there is a lock-out and, if so, whether that action of the employer undermines or may undermine bargaining for a collective agreement.

[7] Counsel consider that whatever the result any determination by the Authority of either of those issues will be challenged or appealed to the Court.

[8] In relation to the ground under s 178(2)(c), there is already before the Court an application by MUNZ seeking remedies from Ports of Auckland in relation to its proposals to contract-out the work of the Union's members.

Determination

[9] The Authority is satisfied that removal as sought by the parties may be ordered on the grounds at s 178(2)(a) and (c) of the Act relied upon in support of the application.

[10] The ground under s 178(2)(d) is also present, as the Authority is of the opinion that in all the circumstances the Court should determine the matter. It is widely known publicly that the bargaining between the parties has been prolonged and

acrimonious and that there have been strikes, and allegedly lock-outs, and that extensive mediation has failed to resolve difficulties that have seemingly prevented the parties from concluding a collective agreement.

[11] Neither MUNZ nor Ports of Auckland has chosen to seek facilitation by the Authority under s 50A to I of the Act as a means of trying to resolve the bargaining difficulties. The parties obviously hope that instead a way forward might be found by taking proceedings to the Court and having it decide central factual and legal issues, although no doubt it is possible that there may be even higher judicial involvement after that.

[12] The plain need to have the present problems between MUNZ and Ports of Auckland conclusively and finally resolved as quickly as possible compels the Authority to consider that in all the circumstances the Court should determine the matter.

[13] For the above reasons the application for removal is granted. The claim brought to the Authority by MUNZ under Authority file number 5370847 is to be transferred to the Court in its entirety, for hearing and determination without the Authority investigating it.

Costs

[14] Costs are reserved.

A Dumbleton
Member of the Employment Relations Authority